

Village of Irvington
Zoning Board of Appeals

Minutes of Meeting held April 20, 2004

A meeting of the Zoning Board of Appeals of the Village of Irvington was held at 8:00 P.M., Tuesday, April 20, 2004, in the Trustees' Meeting Room, Town Hall, Irvington, N.Y.

The following members of the Board were present:

Louis C. Lustenberger, Chairman
Robert Bronnes
Bruce E. Clark
George Rowe, Jr.
Arthur J. Semetis
Robert C. Myers
Christopher Mitchell

Mr. Lustenberger acted as Chairman and Mr. Mitchell as Secretary of the meeting.

Minutes for the Board's meeting of March 23, 2004 were approved.

There were two continuations on the agenda.

Continuations

2002-29 Ruth Nicodemus and C.M. Pateman & Associates - Mountain Road (Sheet 11; Lot P27K) Seeking a variance from Article XV (Resource Protection) of the Zoning Code to permit the construction of one single-family residence and an interpretation or variance from section 243-11A (yard requirements).

2003-27 James Lundy and Martha Chamberland - 31 East Clinton Avenue (Sheet 14; Block 223; Lot 15 & 15A)
Seeking a variance from section 224-10 of the Zoning Code to permit a site capacity determination of two single family dwelling units.

Lundy

The Lundy application was considered first. The chair noted that there had been an exchange of letters between the Village Engineer and the Lundys' engineer, Mr. Ronald Wegner, concluding in March. A number of neighbors had requested time to examine that correspondence further, and any objections from them were to have been filed by April 13; six such objections arrived.

Mr. Richard T. Blancato, lawyer for the applicants, rose to clarify the matter of how parking was planned in the project. He noted that each of the two projected houses would have a two-car garage underneath. He stated that he earlier had given the impression that all the parking was to be provided on the surface, in front of each house.

The chair discussed the issue facing the Board, and described it as only the matter of site capacity determination, in relation to the issue of the flood plain. The chair did not believe that the question of a past

merger of the two lots involved was currently before the Zoning Board, and he further indicated that it might not be crucial to a decision at the present meeting. The applicants did not claim, he observed, that there had not been a merger, and they might well have to go before the Planning Board for a decision on the sub-division of the two lots.

The chair stated that in a resource-protection case, the Zoning Board can grant a variance, based on five criteria, one of which is the size of the variance, a specific point raised in several of the neighbors' recent letters. Mr. Wegner stated that, in that connection, the extent of the variance should be considered 46%, rather than 87%, as the letters had asserted.

The Village Engineer, Mr. Ralph Mastromonaco, was present at the chair's request, in part because neighbors had asked for reassurance on the foreseeable consequences of the project for flooding in the neighborhood. Mr. Mastromonaco stated that the most recent calculations presented by the applicants are in conformity with the Federal Emergency Management Agency (FEMA) topographical maps. In essence, a hole will be dug on Lot 15A to compensate for the impact of the planned building on Lot 15; he noted that there had been a few glitches in the

applicants' implementation of the relevant computer model, but he judged them to be inconsequential. If the project is executed exactly as planned, he stated, there would be no effect on the extent of flood waters reaching neighbors' properties. He wondered, however, how to ensure that the project was carried out precisely as designed.

Mr. Mastromonaco went on to observe that in a really bad storm, there could well be water at the back doors of the two new houses; he stated he was unsure how new homeowners would manage a back yard full of water. Might the village be called upon for some action, he wondered, if a new property owner finds two feet of water behind his back door?

Mr. Semetis asked Mr. Mastromonaco about the experience with flooding that might be anticipated at neighboring houses. The Village Engineer replied that those houses might experience flooding in a heavy rain, but would be at no greater flood risk as a result of the two buildings planned by the Lundys, if they were constructed 100% according to the drawings. He emphasized the potential value of informing future buyers of the planned new structures fully, who might in the course of time wish to add a deck or a patio at the rear of their houses. Mr. Mastromonaco also noted that a "100-year storm" (defined as

one delivering 7.2 inches of rain in a single 24-hour period) is not necessarily the largest foreseeable. In an 11-inch-per-day storm, the basements of the planned new structures would be partly flooded.

Mr. Wegner stated that the basement level of the planned new homes is slated at 163 feet above sea level, the calculated level of a "500-year storm." He was not able to provide an inches-per-day definition of that rainfall category.

Mr. Blancato advanced the idea that the applicants might agree to leave the back of each lot in a natural state, but this initiative was not followed up.

The chair offered a motion to approve the requested variance, focusing on the narrow issue of site capacity. The motion carried by a vote of 3 to 2, and the variance was granted.

Nicodemus

Mr. Blancato, who represented the Nicodemuses, noted that the Board had requested elevations of the planned construction, and Mr. Christopher Pateman displayed two drawings. One showed the residence to be built if the requested variance, permitting a 25-foot setback, were granted, and the other displayed a structure that would

conform to the standard 50-foot setback on a corner lot. Mr. Pateman emphasized what he viewed as the aesthetic advantages of the first concept drawing.

In a colloquy with Mr. Charles Pateman, the chair expressed his view that the variances granted for the neighboring Hall property were not precedent for the Nicodemus case, and measured 5 and 7 feet, in any case. Mr. Myers expressed a concern that if the variance were granted, a precedent might be claimed by other applicants and their lawyers. The applicants then presented a third concept drawing, showing a structure that was calculated to intrude only approximately eight feet into what would otherwise be a 50-foot setback.

Mr. Jon Elwyn, a neighbor, stated his belief that the proponents could be heard on issues of design before the Architectural Review Board. Other houses in the neighborhood, he asserted, met setback variances.

The chair noted that if there is a construction solution that does not require a variance, it is hard for the Board not to take it. He offered a motion to deny the application, which carried by a vote of 5-0.

Several informal consultations followed, on projects not officially before the Board.

There being no further business to come before the meeting, it was, upon motion duly made and seconded, unanimously adjourned.

Christopher Mitchell